

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 03-12307-RGS

JOSEPH CHRISTOFORO

v.

JULIO LUPO, FRANK G. COUSINS, JR.,
INDIVIDUALLY AND IN HIS CAPACITY
AS ESSEX COUNTY SHERIFF, and
CERTAIN UNKNOWN INDIVIDUALS

ORDER ON MOTION TO
AMEND ANSWER

January 17, 2006

STEARNS, D.J.

A notice of appeal having been filed, the court is divested of authority to act on the motion. It is therefore deemed MOOT. United States v. Brooks, 145 F.3d 446, 455-456 (1st Cir. 1998). The court notes that the failure to seasonably raise an affirmative defense ordinarily works as a waiver, as defendant correctly concedes.

SO ORDERED.

/s/ Richard G. Stearns

UNITED STATES DISTRICT JUDGE